

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

<b>UNITED AMERICAN INDUSTRIES, INC.</b>	)	
<b>d/b/a WISDOM NATURAL BRANDS</b>	)	
	)	
<b>and</b>	)	<b>Case 28-CA-208953</b>
	)	
<b>BRIAN HALL, an Individual</b>	)	
	)	
<b>and</b>	)	<b>Case 28-CA-209046</b>
	)	
<b>TINA KOSUMI, an Individual</b>	)	

**REPLY TO RESPONSE TO MOTION TO DISMISS**

United American Industries, Inc. d/b/a Wisdom Natural Brands (“WNB” or the “Company”) files this Reply (“Reply”) pursuant to 29 C.F.R. § 102.24(c) to General Counsel’s Opposition to WNB’s Motion to Dismiss (“Opposition”). In the Opposition, General Counsel argues that Brian Hall had a legal right to file a Charge with the National Labor Relations Board (the “Board” or “NLRB”) alleging a violation of §7 of the National Labor Relations Act (the “NLRA” or “Act”). WNB does not dispute Mr. Hall’s ability to file a Charge to initiate an investigation by the Board; rather, WNB contends that the General Counsel should not have named Mr. Hall as a party to the Board’s Complaint in this matter (the “Action”). Maintaining Mr. Hall as a party to this Action serves no reasonable purpose because he is not subject to the Act’s protections and his one remaining allegation is represented fully and fairly by Ms. Kosumi. This Reply is supported by the following Memorandum of Points and Authorities.

**MEMORANDUM OF POINTS AND AUTHORITIES**

WNB incorporates the factual description and exhibits provided in the Company’s Motion to Dismiss in this Reply.

**I. The Agency did not notify WNB of the partial dismissal of Mr. Hall's Charge.**

As an initial matter, General Counsel states in the Opposition, “upon completion of the Region’s investigation, the Regional Director dismissed all of the allegations in Hall’s charge except for the allegation that Respondent violated Section 8(a)(1) of the Act by discharging its employee Kosumi...” *See* Opposition, p. 2. While WNB agrees whole heartedly that those allegations were without merit, WNB did not receive notice of this dismissal until the Company received the Opposition. Indeed, as of the filing of this Reply, WNB has not received a copy of a partial dismissal letter or any other written or oral indication that a portion of Hall’s Charge was dismissed or that the Board had determined that Mr. Hall was a statutory supervisor.<sup>1</sup> Despite the Board’s failure to notify WNB of the dismissal, the Company will proceed with this Reply with the understanding that only one of Mr. Hall’s allegations remains and that the Agency has determined that Mr. Hall was a statutory supervisor, as stated in the Opposition.

**II. General Counsel fails to distinguish between a Charge and a Complaint in the Opposition.**

General Counsel’s Opposition to WNB’s Motion to Dismiss is based upon the language of 29 U.S.C. § 102.9, which provides that, “[a] charge...may be filed by any person.” General Counsel then proceeds to cite a handful of decisions in support of the proposition that any person, including a statutory supervisor, may file an unfair labor practice charge with the Board.

The decisions that General Counsel cites, as well as several others, distinguish between an unfair labor practice Charge filed with the Board and a Complaint filed by the General Counsel because a Charge, unlike a Complaint, *is not* a pleading. *See NLRB v. Houston Dist.*

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<sup>1</sup> According to the NLRB’s Case Handling Manual, Part 1, § 10122.5 Partial Dismissal, “[w]here the Regional Office determines that only a portion of the charge lacks merit, the nonmeritorious allegations should be dismissed, absent withdrawal. In such situations, the partial dismissal letter should clearly identify those allegations being dismissed and provide the usual opportunity to file an appeal.” The Manual states further, in § 10122.3 Service, “[t]he names and addresses of all interested parties and counsel who have entered appearances on their behalf during the investigation should be listed on the dismissal letter and copies mailed to such persons.”

*Services, Inc.*, 573 F.2d 260, 262-263 (5th Cir. 1978)(“[T]he charge is not a formal pleading.”) The purpose of a Charge is simply to “set[] in motion the machinery of an inquiry.” *NLRB v. Indiana & Michigan Electric Co.*, 63 S. Ct. 394, 400 (1943); *NLRB v. Inland Empire Meat Co.*, 611 F.2d 1235, 1237 (9th Cir. 1979)(“The charge is...not intended to be a detailed pleading or to specify the issues ultimately to be raised before the Trial Examiner; the Board’s complaint serves that function.”)

The purpose underlying this policy is the fact that it may “not [be] prudent for the workman himself to make a complaint against his employer,” because he or she may not feel comfortable with or may not have the ability to file a Charge. *Indiana & Michigan Electric Co.*, *supra* at 400 (internal citations omitted). Accordingly, a Charge, even if it is filed by an individual that is not covered by the Act, can serve as a tool that the Agency can use to uncover wrongs allegedly committed against individuals who are covered by the Act.

Mr. Hall’s inclusion as a party in this matter serves no such purpose. When Mr. Hall filed his Charge, WNB did not dispute his ability to do so or the Board’s ability to investigate the allegations contained in his Charge. Indeed, WNB cooperated fully in the Board’s investigations of both Mr. Hall’s and Ms. Kosumi’s charges. If, however, as stated in the Opposition, the Board determined after completing its investigation that Mr. Hall was a statutory supervisor and his only allegedly valid accusation was that Ms. Kosumi’s termination violated the Act, Mr. Hall should not have been included as a party in this Action.

The allegations in the Complaint in this matter refer solely to WNB’s alleged conduct with respect to Ms. Kosumi. Indeed, the Complaint does not contain a single substantive allegation regarding Mr. Hall. General Counsel concedes in the Opposition that Mr. Hall was a statutory supervisor pursuant to § 2(11) of the Act and that he is not covered by the Act’s

protections. General Counsel states further in the Opposition that Hall will not be entitled to any remedies resulting from this Action. *See* Opposition, p. 4. It is further uncontested that Ms. Kosumi is a party to this Action and that the only remedy being requested in General Counsel's Complaint in this Action is for Ms. Kosumi to be "made whole." *See* Complaint, ¶ 6. Accordingly, it appears that Mr. Hall's inclusion in this Action as a party serves only to complicate the matters at issue in this Action and to decrease the efficiency of the hearing process.

General Counsel cites *Chesapeake Energy*, 362 NLRB No. 80 (2015) in support of the contention that Mr. Hall should be permitted to remain as a party to this lawsuit. In *Chesapeake*, a statutory supervisor challenged a workplace rule that allegedly chilled employees' § 7 activity. Unlike the instant Action, the Charging Party in *Chesapeake Energy* was the sole Charging Party. No statutory employees or other individuals had filed Charges upon which the General Counsel could issue a Complaint. As such, the Respondent in *Chesapeake Energy* was attempting to dismiss the entire Complaint based upon the Charging Party's status as a statutory supervisor. *See Chesapeake Energy, Id.* at fn. 3. WNB is not seeking to dismiss the Complaint in this matter. By contrast, WNB seeks only to dismiss an unnecessary party and duplicative Charge.

As such, based upon the foregoing, WNB requests that the Board dismiss Mr. Hall as a party to this lawsuit so that the parties may litigate this action in the most efficient way possible while still permitting the examination of all of the allegations with which the Agency found potential merit.

Dated: March 27, 2018.

/s/ John J. Balitis, Jr.

John J. Balitis, Jr.

Julia S. Acken

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been electronically filed and/or served on the following by directing same to their office addresses via first-class United States mail, postage prepaid, and electronic mail, on this the 13<sup>th</sup> day of March 2018:

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